



An Energy Efficiency Workshop & Exposition

Kansas City, Missouri

STATUTORY BASIS FOR ENERGY SAVINGS PERFORMANCE CONTRACTS (ESPC)

Energy Policy Act of 1992, Public Law 102-486, Section 155

42 U.S.C. § 8287 Authority to enter into contracts.

- Federal agencies are authorized to enter into contracts solely for the purpose of achieving energy savings and benefits ancillary to that purpose.
- Contracts may be for 25 year term.
- Contracts provide for a guarantee of savings to the agency.
- Contractor incurs costs of implementing energy savings measures in exchange for a share of the energy savings obtained.
- Amounts paid by a Federal agency under ESPCs may come only from funds appropriated for payment of energy expenses and related operation and maintenance expenses.



STATUTORY BASIS FOR ESPCs continued...

42 U.S.C. § 8287c. Definitions.

- Energy Savings means a reduction in the cost of energy used in an existing federally owned building or other federally owned facilities from either:
 - Ⓜ the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or
 - Ⓜ the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or other federally owned facilities.
- Energy Conservation Measures means measures applied to a federal building that improve energy efficiency, are life-cycle cost-effective and involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities.



STATUTORY BASIS FOR ESPCs continued...

42 U.S.C. § 8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations.

- Skaggs Amendment
- Provides DOE with permanent authority to accept funds from other Federal agencies for assisting them in achieving energy efficiency, water conservation and use of renewable energy through the use of privately financed mechanisms including utility efficiency service contracts and ESPCs.

42 U.S.C. § 8256 Incentives for Agencies.

- Agencies may retain for expenditure 50% of the energy and water cost savings realized under ESPCs and utility energy efficiency rebates. Agencies may expend these amounts for additional energy efficiency or water conservation projects including improvements and retrofits, facility surveys, additional or improved utility metering and employee training and awareness programs.

42 U.S.C. § 8256(c)(5)(A); P.L. 104-52, Section 625.



REGULATORY IMPLEMENTATION OF ENERGY POLICY ACT ESPC PROVISIONS

10 C.F.R. Part 436, Subpart B Methods and Procedures for Energy Savings Performance Contracting.

- Regulations supersede any conflicting FAR provisions and related Federal agency regulations regarding ESPCs.
- Permissive provisions of this subpart shall be liberally construed to effectuate the objectives of NECPA, the National Energy Conservation Policy Act, 42 U.S.C. §§ 8287-8287d.
- Energy Cost Savings defined more broadly than the statute. Includes “related operation and maintenance expenses” as energy cost savings.
- ESPCs are firm fixed-price contracts.



REGULATORY IMPLEMENTATION continued...

10 C.F.R. Part 436, Subpart B Methods and Procedures for Energy Savings Performance Contracting.

- DOE and DOD ESPC Indefinite Delivery, Indefinite Quantity (IDIQ) Contracts are in place nationwide and available for use by all agencies. Agencies can avoid lengthy competitive selection processes by issuing delivery orders against the IDIQs for projects at their sites.
- Third Party Financing
 - ® Financing Agreements must be approved by the contracting officer.
 - ® Financing Source may perfect a security interest in the installed ECMs subject to and subordinate to the rights of the Federal agency, if permitted by the contract.
 - ® Federal Agencies may finance ECMs provided that guaranteed energy cost savings exceed the contractor's debt service requirements.



CURRENT ESPC ISSUES

- (1) Contract Term
- (2) Water
- (3) Government Performing Operations and Maintenance
- (4) Taxes/Title
- (5) Buy Down/Buy Out
- (6) Cancellation Ceiling
- (7) New Construction